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OFFICE OF PETITIONS

In re Application :
Handique et al. :
Application No. 10/075,371 : LETTER REGARDING PTA
Filed: February 15, 2002 :
Atty Docket No. 19662-03001 :

This letter is in response to the "REQUESTING FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(b)," filed November 9, 2007. Pursuant to their duty of good faith and candor, applicants disclose that they believe the patent term adjustment calculation was done incorrectly.

The request for review of the determination of patent term adjustment (PTA) is dismissed.

On August 9, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 403 days. Applicants state that pursuant to 37 CFR §1.704(b), the time period should be reduced 61 days from April 23, 2006 to June 23, 2006 for the submission of the Request for Continued Examination (RCE) submitted on June 23, 2006.

A review of the application history supports a conclusion that the number of days adjusted for Office delay and the number of days reduced for applicants' delay is correct. A Notice of Appeal was filed on February 23, 2006 three months and 92 days after the mailing of the final Office action of August 23, 2005. Pursuant to 37 CFR 1.704(b), a period of reduction of 92 days was entered. The RCE was then filed on April 23, 2006. The filing of a RCE, in lieu of, an appeal brief after the filing of a notice of appeal is not a failure to engage within the meaning of §§ 1.704(b) or 1.704(c)(8). Accordingly, no further reduction was entered for the filing of the RCE. Applicants continue to be under a duty to advise the Office of any error in according too much PTA.

In view thereof, the initial determination of Patent Term Adjustment remains four hundred three (403) days.

As this letter was submitted as an advisement to the Office of an error in Applicants' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office. It is however noted that applicants were inadvertently charged a \$230.00 extension of time fee, which will be refunded to deposit account no. 06-1050.

The application is being forwarded to the Publications Division for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to the Petitions Attorney Charlema Grant at (571) 272-3215.

A handwritten signature in black ink, appearing to read "Nancy Johnson", is written over the typed name and title.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions